(1)

91-654

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PAUL J. CAFARO
- PETITIONER

vs.

PEOPLE OF THE STATE OF NEW YORK
- RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK APPELLATE TERM OF THE SUPREME COURT FOR 9TH & 10TH JUDICIAL DISTRICTS

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QUESTION PRESENTED

As a matter of tradition, the collective conscience of our people, and respect for paramount Constitutional law, and its inherent moral principles, as formally established by this Court in Marbury v. Madison, is it not this Courts obligation to find State Court rulings in conflict with the decisions of this Court, and operating as superior law, (1) beyond the specific and implied prohibitions of the First, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and (2) violating this Appellant's vested personal right to the equal protection of, legislated law, and self-evident Natural law; expressly repugnant to the Constitution, improper, without authority and void?

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NO. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 1991

Paul J. Cafaro, Petitioner, Pro Se
vs.
People of the State of New York, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
NEW YORK APPELLATE TERM OF THE SUPREME COURT
FOR THE 9TH & 10TH JUDICIAL DISTRICTS

INTRODUCTION

Petitioner,(Appellant), PAUL J. CAFARO, a nuclear physicist by profession, 25 years with the United States Defense Department, at a Research and Development Center noted for its excellence, defending the fundamental freedoms inherent in our society, respectfully prays this Court will overrule the New York State Courts that have

fraudulently tried to make this citizen a criminal, by (1) reaffirming the fundamental principles as logically established in Marbury v. Madison, 1 Cranch 137, 2 L.Ed 60 (1803), (2) giving effect to this Appellant's fundamental personal rights, (3) giving effect to a State's right to legislate constitutional law for the safety and welfare of its people, (4) giving effect to self-evident Natural law we all live by, and (5) find the 4th District Court act, of deeming a trellis arbor, a fence, unconstitutional, without authority and void because it is violative of this Appellant's vested Constitutional rights under the First, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States.

This Appellant seeks from this Court the

justice promised by the Framers of our Constitution, which demands not only reversal of the judgment of conviction and the sentence imposed by the 4th District Court, Nassau County, New York, but this Courts direction, that acts deemed from the bench not have authority superior to self-evident Natural law, Constitutional law and principles, or vested State and personal rights.

This Appellant, my mother and two sisters, all college educated and equal owners of our home, residing in this community for 37 years, respected for our work, originators and founders of an educational mind health and humanities program to further human understanding in our society, have been denied our vested right to decorate our private garden with trellis

arbors, on the patio about our inground swimming pool, and we know the difference between a trellis arbor and a fence.

The basis for determining fenced real property in New York State's general law of State-wide application is:

> "a person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property which is **fenced** or otherwise **enclosed in a manner designed to exclude intruders**.", New York State Penal Law Title I Section 140.10(a), Appendix I(3), emphasis added.

This is also the basis for determining fenced property in Town of Oyster Bay Code, when **a fence** is required for a property with an inground swimming pool;

> "Such fencing shall be erected and maintained so as to **completely enclose** at least the outside perimeter of the pool, or the perimeter yard in which the pool is situated.", Town of Oyster Bay Code Sec. 246-39 E(1), Appendix I(8), emphasis added.
> "All (fence) gates or doors must be

equipped with a self closing, self latching device located on the inside of the gate or door. Such gate or door must be **securely closed and locked at all times** when not in use.", Town of Oyster Bay Code Sec. 246-39 E(3), Appendix I(8), emphasis added.

The Town of Oyster Bay Fence ordinance Sec. 327, (and Sec. 246-144 Fences), defines a fence as **a barrier** not exceeding four(4) feet in height, erected

"**With respect to all lot lines** ...", Appendix I(6-7), emphasis added.

So by the explicitly defined fence laws of the Town of Oyster Bay, and General State Law all homeowners have an unrestricted right to a fence, having the **function** of shuting in the land, and the **purpose** of preventing trespass. Although homeowners have the right to partially fence their property or have a few bushes or shade trees or trellis arbors, if they want to keep it open, this should

only be encouraged when a fence is not needed or no obvious danger exists on a property. Certainly homeowners cannot be allowed to claim they have a fence when the land is open, so too, the Respondent and State Courts can't make such a claim. The **legal meaning, function** and **purpose** of a fence is that it be a barrier that **completely encloses** and "**shuts in the land**" to "**prevent intrusion (trespass) from without or straying from within**", and this provides the enforcement powers of the fence ordinance to enclose swimming pools, hazardous waste sites, electrical power transformers, etc. For a Court to enforce these powers in an opposite and perverse way so as to claim that this Appellant's "pieces of trellis work" that do not shut in the land, is a fence, defeats the purpose for which the Legislature defined a

fence; to provide for the safety and "welfare of the community", when a fence is required Appendix J(5),K(9) & Town Law, Sec 261 @ I(4)

Traditional notions of due process require that the fence zoning ordinance Sec. 327, bear at least a reasonable relationship to a legitimate governmental purpose, as in protecting the safety of the general public from unauthorized entry upon private property, either by intruders that ignore fenced property, or by preventing entry upon land that may be considered hazardous, and the 4th District Court ruling in the instant case implicitly nullifies the Police Power protection established for a fence, by elected State Legislators, Town Law, Art. 16, Sec. 261 @ Appendix I(4).

The fence ordinance provides the law upon which the 4th District Court must base its

jurisdiction, and the law must be reasonably and rationally interpreted, and not be in conflict with State legislated general law, that clearly defines the purpose and function of a fence as enclosing, or shutting in the land to prevent trespass. If a Court uses its discretion in a contrived and arbitrary way, inconsistent with Constitutional law, inconsistent with Natural law, inconsistent with general State and Local law, and inconsistent with the Greater Best Interests of Public Safety and Welfare, solely to deprive this Appellant of his trellis arbors (that do not shut in the land), or to selectively burden the incidental accessory use of private property, is repugnant. A permit is required for a fence, to make sure a fence provides its sufficient purpose and substantial function requirements so as to

promote safety and the general welfare.

If New York State Court's can arbitrarily deem a tree, or a patio umbrella, or a trellis arbor that do not shut in the land, and don't require permits, to be a fence, under a perverse Police Power hypothesis, (that creates a clear and present danger to the safety and vested rights of all citizens) in the name of providing safety, light or air for an adjoining land owner is unfounded. A six foot stockade fence legally shuts out adjoining land owners and the Public from any contact with this Appellant's trellis arbors, safely behind the stockade fence, and under Town Code Sec. 326. Accessory Buildings are legally allowed to be located in the same area of the yard this Appellant's trellis arbors are located, and can rise 18 feet into the air, almost twice the height of this

Appellant's trellis arbors in the same location, Appendix I(9). It is unwarranted governmental interference for Court's to effectively supervise the design of trellis arbors, or effectively allocate by personal zoning from the bench, requirements for air, light or shadow on private property, more strictly than the general zoning laws of the Town of Oyster Bay require. Fundamental State and personal rights are, and must continue to be protected by the Federal Constitution. The 4th District Court, and the Respondent, have not shown a subordinating interest that is more compelling.

The direct Prima Facie (photographic) evidence, entered at trial, clearly shows there are many feet of open space between each and every trellis arbor, and that the purpose of this Appellant's trellis arbors is

to support living vines, and also shows they do not shut in the land, Appendix K(10-13).

The Trial Judge referred to this Appellant's trellis arbors as "pieces of trellis work", Appendix K(9); ruling "pieces of trellis work" indistinguishable from a fence gives no effect to self-evident Natural law, certainly, the gravitational, electromagnetic and nuclear forces that bind all objects in this universe together do not do so to the extinction of the identity of individual objects. The self-evident Natural law in this universe does not deny solid objects their own identity or definition even if one object may happen to be affixed to another object. In the stories and legends of men, it is considered magical for self-evident Natural law to be violated, as this implies unlimited power. One such story

depicts a Knight that had to remove a sword affixed in stone to become ruler of the land. Certainly this Court recognizes the distinct objects in this story, a Knight, a sword, and a stone, because each has its own definition, function and purpose, and it would be un-Natural, magical, unlimited power, if the Knight, sword and stone were magically deemed "for lack of a better word", to be a 'fence' by the story teller. It should be clear that when the function and the purpose of trellises and fences are commonly known, or legally defined, it is beyond discretion, it is beyond opinion, it is just plain unlimited power for a Court to selectively tell this college educated Appellant that his trellis arbors are a fence, Appendix K(7).

A fence and a trellis arbor have different functions and different purposes

and a trellis arbor behind a fence is just like a telephone pole behind a fence, both retain their purpose and function even if the legal fence is nailed to it. Self- evident, universal, Natural observation can't be given unequal effect under law, Const. Amend 14.

It is beyond the rule of law to assign the fence word (with a clearly defined legal meaning), to "pieces of trellis work" (which are clearly something other than a fence by its own function and purpose), just as it would be un-Natural to use the word orange to describe an apple, Const. Amend. 14.

A ruling of a State Court in conflict with self-evident Natural law, defined by the Creator, is violative of the vested Constitutional legal right to <u>the equal protection of law</u>. Natural law cannot be overturned or given perverse effect at the

discretion of State Court's, it's as much a rule of law as any defined by man, Amend. 9.

The 4th District Court has no legitimate legal or public purpose in selectively denying Federal, State and Local laws which draws into question their constitutionality, and the Solicitor General, Attorney General of the United States, and the Attorney General of New York State have been advised under, U.S.C., Title 28, Sec. 2403(a),(b).

There must be a legal basis for a Court to declare trellis arbors illegal, and if that legal basis is to deem them a fence, then certainly its only reasonable that a fence as clearly and legally defined by legislated law must be the rule of law that guides a court in the exercise of its jurisdiction.

By the explicitly defined general and

local law of the State of New York that defines a fence, individual sections of stockade fencing, even commonly perceived to have a fence purpose, do not become a fence until they are joined together to enclose or shut in the land, preventing trespass, so too, individual sections of trellis arbor, trees or hedges don't have a fence purpose, if they are not joined together, to prevent trespass, and don't shut in the land. The trial judge knew and described this Appellant's trellis arbors as "pieces of trellis work", but in spite of his perception, he deemed or willed a fence purpose to these separate and distinct trellis arbors, Appendix I(3,7,8), J(5).

When a Judge mistakenly ascribes a fence purpose to trellis arbors, the New York Courts of Appeal cannot find, on the law as

duly enacted in this State, that a trial Judge's opinion is superior to the legislated law.

If a judge ascribes a no trespass purpose to this Appellant's trellis arbors, it is obviously inconsistent and in conflict with the general law of this State, **because trellis arbors that do not shut in the land cannot function with a no trespass purpose**.

Obviously the Courts of Appeal are wrong when they say there is no question of law which ought to be reviewed in this case.

Perhaps the 4th District Court wants to encourage property to be open. Perhaps the 4th District Court wants to change the fence law. Perhaps it wants to encourage all property even hazardous properties to be open. Perhaps it wants to sit in judgment of what constitutes beauty. Perhaps it wants to

design its own trellis arbors on other peoples property. But, whatever the 4th District Courts reason, the duly elected Legislative Representatives of this State have seen fit to define a fence for the Safety and Welfare of the General Public as a barrier that Shuts in the Land, and

> "the subject is within the Police Power of the State", Sproles v. Binford, supra, at 286 U.S. 388.

The State Legislature has never seen fit to require any particular design for trellis arbors, nor seen fit to define beauty by law, because beauty, be it order or chaos, is a personal judgement. In the eyes of this beholder the diversity of beauty and purpose accomplished by constraining randomly growing rose, ivy and grape vines upon separate trellis arbors, is just as beautiful as the chaotic pounding and splashing of the waves,

on the rocks upon a shore, and just as beautiful as the setting sun behind a calm orderly sea. Diversity of belief and ideas as to what constitutes beauty, is not illegal in this country, and can have as many interpretations as the diverse people that contemplate it, duly elected Legislators never enacted a law defining beauty, and Court's cannot legislate beauty from the bench, without Legislated law to guide the exercise of their jurisdiction. Niether trellis arbor requirements, or beauty, has ever been Legislated in the Fence Ordinance Sec. 327, Const. Amend. 1; Appendix I(7).

To deny to this Appellant, within a community containing a wide variety of religious, economic, racial and ethnic backgrounds, the American Dream of a Home in the country with a garden, some flowers, a

few shade trees and some rose or ivy or grape arbors, should not be a ruling made at the discretion of a Court, without some legislated rule of law to guide its jurisdiction. Our Constitution, as the legislated rule of law of this land, has always sought to protect Americans in their beliefs and in their pursuit of happiness, and provided for us the fundamental right to make our private dreams a reality, in a world that withholds from government the power to invade the sphere of private liberties endowed to each of us by the Creator, Const. Amends 1, 5, 9, 14; U.N Declar. Human Rights.

Court's that deem plants, that don't shut in the land, a fence, are in conflict with the Community's Comprehensive Plan, that makes allowance for, and accommodates, the incidental accessory use of plants in a

residential garden. Certainly providing plants access to sunlight, utilizing trellis arbors, is legal, just as using other equipment to accommodate solar energy systems is legal, and plant life promotes the public health and welfare; absorbing air pollution, providing oxygen and fragrance, providing a habitat for birds, a buffer to noise, privacy from disturbance, ecological balance, etc. For a State Court to deny rose and ivy vines growing upon trellis arbors as being a, part of a mans home puts the Court in conflict with the Community Comprehensive Plan, Town Law, Art. 16, Sec. 263), Appendix I(5).

The Legislators are the guardians of the peoples interests by making the laws. The Courts are the guardians of the peoples rights, as defined by the legislated law, and the Constitution. Duly constituted, elected,

Legislative bodies in this State have clearly and explicitly defined the purpose and function of a fence in general State law of State-wide application. The selective application of a State Court's discretion, in conflict with general State law, does not "constitute a rule operative as if it was law" nor can it supersede that law. Marbury v. Madison, supra, at 177.

Laws cannot be given effect just for some of the people some of the time, but must be given effect for all of the people all of the time. Court ruling's, that attempt to govern men and things in such a way as to deny the personal need to establish a home, as a private place, to meditate, or pursue happiness, or find sanctuary in nature, from other associations and pressures of modern day life, or simply for this Rosarian to show

a reverence for Nature and the creations of an intelligence higher than our own, are clearly unconstitutional, Const. Amend. 1.

The Framers of our Constitution sought to protect natural rights to property, to privacy, our beliefs, thoughts and contemplations. It is the "totality of the constitutional scheme" of the Framers, that protects our spiritual nature, our feelings of pleasure, and satisfaction with life, in all its diversity, Poe v. Ullman, 367 U.S. 497, 521, 81 S.Ct. 1752, 1765 (1961).

If there is no law on trellis arbors, the liberty to have them should not be denied. The purpose and function of a fence as explicitly defined by general State law, may in the opinion of the 4th District Court, be too restrictive, be unjust, or be unwise, but a clearly defined fence, that a duly

constituted Legislature defines must enclose or shut in the land, to exclude any trespass, clearly cannot be considered dangerous, or destructive to the public interest, or made dangerous for the Public by the New York Court's effectively deeming things that don't shut in the land, like open "pieces of trellis work", or patio umbrellas, or hedges, etc., a fence, removes the safeguards imposed by duly elected State Legislators to

> "promote the health, safety, (and).. welfare of the community", Town Law, Art. 16, Sec. 261, Appendix I(4).

New York State Court's cannot will themselves the absolute power to deny property use, and liberty, beyond due process, and the equal protection of law, or deny other fundamental personal rights explicitly and implicitly guaranteed in our Bill of Rights to the Constitution which is

"...violative of (this Appellant's) vested legal right(s)" to Constitutional guarantees. The New York Court's must be "amenable to the laws" of this Nation, Marbury v. Madison, supra, at 162, 164; U.S. Const. Amend. 14.

Chief Justice Marshall stated in Marbury

> "if laws furnish no remedy for the violation of a vested legal right... (how can we be) ... termed a government of laws, and not of men.", Id, at 163.

The power to deny the Constitutional laws of elected representatives, or fundamental personal rights, confers absolute power, and as such, is a secession from the moral principles of this Nation and its Constitution.

There is no provision in the Constitution that either expressly, or impliedly, vests power in this Court to set aside Natural law, or to sit as a supervisory agency over the

acts of duly constituted Legislative bodies of a State, or the Congress, and set aside their laws, as explicitly and legally defined, as this would be;

> "wholly beyond the protection ... the Fourteenth Amendment was intended to secure." Sproles v. Binford, 286 U.S. 374, 388, 52 S.Ct. 581, 585, 76 L.Ed. 1167 (1932).

So too, State Courts do not have the authority to sit as a supervisory agency over acts of duly constituted, elected Legislative bodies or their laws, as explicitly and legally defined; especially when a fence is explicitly defined the way it is, by the general law of New York State, in the Interest of the Safety and Welfare of the Public, and the 4th District Court should not tamper with that explicit State definition

> "when the subject lies within the Police Power of the State" Id, at 388-389, 52 S.Ct. at 585.

The Ninth Amendment to the Constitution of the United States, in conjunction with First, Fifth, and Fourteenth Amendment principles, protects this Appellant's vested personal rights, and also protects a State's right to constitutionally legislate the function and purpose of a fence by its law (Const. Amends 1,5,9,14).

The perverse application of the 4th District Court's jurisdiction, deeming open "pieces of trellis work" a fence, violates; (1) this Appellant's fundamental right to ancillary use of trellis arbors, that do not shut in the land, and have the purpose and function of providing support to living vines, on private property not open to the public, behind a legal stockade fence on the border of this Appellant's property, (2) the vested right to erect trellis arbors as a

quiet expression of this Rosarian's right to associate with Nature, and peacefully enjoy ones established home, (3) the fundamental right to be protected by duly constituted State law, as it Legislatively defines the function and purpose of a fence, (4) the fundamental right to be protected equally under self-evident Natural law, (5) the fundamental right to express in ones own way a reverence for all life forms the Creator provided this world, plant or animal, (6) the fundamental right not to be convicted under color of law, (7) the fundamental right not to be cruelly denied property and unusually punished and fined, in excess of the limitations of law, and (8) the vested right to be able to live secure in ones ability pursue happiness, or one's own life-style, thoughts, ideas, etc., without undue

interference by any Court, State or Union of States, essentially, the right to be ruled by the law as defined, or be let alone, US Const Amends. 1,5,8,9,14; U.N. Universal Declar. of Human Rights Art's 2,,3,5,7,8,12,17(2),18,19, 20(2),27(2),28,29(3),30. The Framers knew fundamental rights, expressly enumerated in the Constitution,should not deny or disparage other fundamental rights, not specifically enumerated. If this Court follows the path of the Framers it will not defer to State Courts the unlimited power to rule men by opinion that is in conflict with Constitutional, General, Local and self-evident Natural law, overthrowing the Peoples Interests protected by the Defined Law, Const. Amends 1,5,8,9,14. The above, briefly outlines the legal and moral basis, upon which I ask this Court to issue a Writ of Certiorari, and to review the

Rulings of the New York State Courts below:

The New York Court of Appeals denial on June 10, 1991 of leave to appeal from an order of the Appellate Term of Supreme Court For the 9th and 10th Judicial Districts, dated March 18, 1991 which modified and as so modified affirmed a judgment of conviction of District Court, rendered April 28, 1989 in Fourth District Nassau County New York.

OPINIONS BELOW

The opinion of the New York State Court of Appeals, denying leave to appeal, appears in Appendix A to this Petition. The written opinion of the Appellate Term of the Supreme Court of the State of New York for the 9th and 10th Judicial Districts, appears in Appendix B to this Petition. The written opinion of the 4th District Court Nassau County New York appears in Appendix C.

JURISDICTION

All State appeals were exhausted when New York States highest Court denied leave to appeal on June 10, 1991. This Court's jurisdiction, to review by Petition the important Constitutional questions raised by this Appellant in every Court that considered the instant case, is invoked under Title 28, U.S.C. Section 1254(1), and this Courts jurisdiction to review and determine State Court rulings is invoked under Title 28, U.S.C. Sections 2104 and 2106. This Appellant's fundamental and vested Constitutional rights as enacted by the Framers have been drawn into question because the New York State Courts have given them no effect in the instant case, hence Title 28, U.S.C. Section 2403(a) is also applicable.

This Appellant's fundamental right to be

protected in accordance with the duly constituted New York State laws of General Character and State-wide application have also been given no effect by New York State Courts, drawing into question the constitutionality of these General laws, and the Town Laws and Local Ordinances that explicitly define the purpose and function of a fence, hence Title 28, U.S.C. Section 2403(b) may be applicable, if the Attorney General of New York State is unaware of the proceedings in the instant case.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 1 to the United States Constitution is set forth in Appendix D.

Amendment 5 to the United States Constitution is set forth in Appendix E.

Amendment 8 to the United States Constitution is set forth in Appendix F.

Amendment 9 to the United States Constitution is set forth in Appendix G.

Amendment 14 to the United State Constitution is set forth in Appendix H.

OPINION OF THIS COURT

This Courts opinion in, conflict with the instant case ruling, is cited from the pertinent cases in the Table of Authorities on page iv.

NEW YORK STATE STATUTORY PROVISIONS INVOLVED

New York State Penal Law, Town Law and Oyster Bay Code, explicitly and implicitly in conflict with the ruling in the instant case is set forth in Appendix I.

FEDERAL QUESTIONS RAISED BELOW

Federal questions raised in 4th District Court, Nassau County, the Appellate Term of the Supreme Court for the 9th and 10th Judicial Districts, and the New York State

Court of Appeals is set forth in Appendix J.

RELEVANT PASSAGES FROM TRIAL TRANSCRIPT AND PHOTOGRAPHIC EVIDENCE

Relevant passages of the Trial Transcript cited in this Petition are found in Appendix K(1-9), and photographs in Appendix K(10-13).

STATEMENT OF THE CASE

On June 6, 1983 this Appellant was served notice by mail that an accusatory instrument would be entered on or about June 21, 1983, at 4th District Court Nassau County, alleging that this Appellant's nine(9) foot tall patio umbrellas, and eight(8) to ten(10) foot tall trellis arbors, on the patio about my inground swimming pool, and behind my legal six(6) foot stockade fence, were a violation of the height limitation of the Town of Oyster Bay Fence Ordinance Sec. 327 (4th District Case # CR 751/83).

On June 11, 1983 an attorney was retained by this Appellant to make clear to the Court, **before trial**, that the People's accusation was a violation of Constitutional rights and so vague as to be ludicrous, because it essentially implies, that anything not shutting in the land can be a fence, clearly contrary to general State law, Town law, Local law, and the self-evident fact that not all objects in this world are a fence.

On December 2, 1983 the 4th District Court Nassau County dismissed the accusatory instrument, without comment.

On October 9, 1987 a second identical accusatory instrument, **the instant case** (CR 2920/87), was brought before the 4th District Court by the Respondent, claiming that trellises, "... ranging in height from

(6') to eight (8) or nine (9)... (or) approximately ten feet (10') high,... (is) improper construction ..." for a fence, and violates the Fence Ordinance Sec. 327, Appendix C(5).

On November 2, 1988 the instant case was brought to trial by the Respondent who declared at trial that

> "for lack of a better word I'll call this (trellis) a fence", Trial Transcript, pg 42, ln 9-10; Appendix K(7).

and established at trial, that (1) a legal fence exists on the border of this Appellant's property, Trial Transcript, pg 7, lns 3-10, Appendix K(1), and (2) established that this Appellant's trellis arbors, behind the legal stockade fence, are interwoven, delicate, and secured to nothing, Appendix K(3), (it was obvious from the information that trellis arbors used to hold and shape living vines couldn't be a fence, by its very construction, let alone its function,

purpose, furthermore, it's self-evident that objects, other than a fence, like a telephone pole, tree, patio umbrella or trellis arbor etc., behind a legal fence, with a different function and purpose than a fence, can't make a legal fence on the border of this Appellant's property "illegal" under Town Law, Art. 16, Sec. 268(1), Appendix I(6)). Yet the Respondent, and Court effectively ascribed such 'Midas touch' qualities to fences, in conflict with Natural law, and in violation of this Appellant's vested personal rights, and a States right to enact its own law.

This Appellant's attorney argued at trial that this same issue was previously resolved by the Court in 1983, as a matter of public record, Trial Transcript, pg 28, ln 19-25; Appendix K(3-4), J(2).

The Respondent interrupted and stipulated that he could not proceed with the 1983 trial as he had no jurisdiction - (the Respondent implied to the Court that it was the legal stockade fence about this Appellant's property that ostensibly provided sanctuary from prosecution although no jurisdiction by law exists with regard to trellis arbors under the fence ordinance sec. 327, Trial Transcript, pg 29, ln 3-14; Appendix K(4), J(1). The Respondent served other accusatory instruments inspite of this Appellant's fence, stipulating only for the 1983 case, the illusory pretense that sanctuary from prosecution exists because a fence shuts in the land, and this Appellant to this day continues to wonder how New York State Courts can justify a legal fence around a property as being superior to Fifth and

Fourteenth Amendment principles, when the same charge was acquitted by the 1983 dismissal, as a matter of public record.

On January 26, 1989 the 4th District Court ruled;

> "... what the People describe as a fence on the defendant's property violates the ordinance and must be removed. If the defendant wishes to maintain a fence on the border of his property, it must be of the proper material and height." (Appendix C).

- but obviously - if homeowners can't claim to have a fence, if their land is open, certainly the People and the New York Court's can't claim this Appellant's trellis arbors are a fence, when they do not enclose or shut in my land. This Appellant argued on appeal that (1) this ruling effectively defers to the People the right to describe anything behind a fence, to be a fence, irrespective of its function or purpose, Appendix J(3-4),

and (2) that I have a permit and variance for the fence on the border of my property, and it is legal, (3) that the 4th District Court and the People's vague definition of a fence is in conflict with State and National definition, function and purpose, and removes the safety and welfare conditions imposed by the explicit, legislated, fence definition, Appendix J(5-9), and (4) the Chief Building Inspector's absurd claim, that this Appellant's trellis arbors, that have never caused any safety problem over the last decade we have owned them, were allegedly dangerously close to power lines, was self-evidently not true, utilities never place power lines so close to the ground that they may touch a patio umbrella or trellis arbor 8 to 10 feet tall, Appendix K(12).

On April 28, 1989, this Appellant was

sentenced to remove the fence on the border of my property by June 30, 1989, or a fine of $2100 dollars would be imposed on July 1,1989 with an additional $10 dollar fine for each day thereafter that the fence remained up. This Appellant argued on appeal that, (1) not only is the judgement in violation of 1st, 5th, 9th and 14th Amendment rights, Appendix J(9), but (2) the sentence violates the Eighth Amendment of the Constitution because it's a cruel and unusual punishment, Appendix J(7), (a) for a Homeowner already acquitted, as a matter of public record,of the one act of erecting trellis arbors and patio umbrellas in 1983 to be fined years later (on September 16th, 1987 and the 8th, 9th, and 22nd of october 1987) for fixing or repairing these trellises, on different dates, before the trial in the instant case

(November 2, 1988) even found them to be a fence, and (b) then be fined in excess of the defined law where $250 dollars is the maximum fine allowed under N.Y. State Penal Law, Title E, Sec. 80.05(4), of New York State Penal Law. The, felony class, $2100 dollar fine imposed, on a first offense, is not only unusual for a violation, but when imposed for the single act dismissed as a matter of public record in 1983 it also violates N.Y. State Penal Law, Title E Sec. 80.15 and Town Law, Art. 16,Sec. 268(1), Appendix I(2),I(6), and, (3) the ruling is inconsistent with the Prima Facie facts, as clearly established by this Appellant's attorney, and the People at trial; because the People's eye witness, the Chief Building Inspector, testified under oath at trial;

"...(the trellis arbors are) just standing up...(not affixed to the stockade fence) ...secured to nothing." Trial Transcript, pg 15,lns 22-24), Appendix K(2), K(3);

testified: "...there's other trellises there...", that are, "Different" .... "the whole thing is a little different concept there.", TrialTranscript, pg. 20, lns. 15-18), Appendix K(3);

when asked: "Does the Defendant have a six-foot fence around his entire premises?"

testified: "Yes, he does.";

when asked: "and did he get permission by virtue of a variance in order to put that fence there?";
testified: "Yes, he did.";

when asked: "so that fence is legally there, six foot?";

testified: "six-foot stockade fence is legally there." (Appendix L, Trial Transcript, pg. 7, lns. 3-11);

when asked: "in the Town of Oyster Bay Code, are there any restrictions as far as trellises are concerned?";

testified: "not to my knowledge" Appendix L, Trial Transcript, pg 30, lns 24-25 and pg 31, lns 1-2),

Can Town of Oyster Bay attorney's be so incompetent, they don't know the definition, function and purpose of a fence, as easily found by myself, and universally defined in every law library of this Nation, and as verified in general New York State statutes?

Under the Rules of Ethics adopted by New York States Highest Court the ongoing illegal actions against this Appellant, since 1983, should not have been continued. For attorneys to perpetrate what they have, upon the judiciary tribunals responsible for deciding this matter is illegal by the Rules of Ethics (attorney's cannot place themselves in a position to shield illegal actions or foster a malicious prosecution, Appendix J(1), J(5).

On July 27, 1989 this Appellant filed his appellate brief detailing his objections to the 4th District Court ruling, on the facts,

and on State and Constitutional laws.

On January 11, 1990 this Appellant submitted a motion before the 4th District Court for permission to reconstruct the entire trial record that mysteriously disappeared at the Appellate Term Court.

On March 18, 1991 the Appellate Term Court for the 9th and 10th Judicial Districts, in its opinion, effectively deferred to the opinion of the 4th District Court, sanctioning the ruling that deemed "pieces of trellis work" a fence, and that a previous 1983 dismissal of the same charge against the same Homeowner was not dispositive of the instant action. It modified a portion of the sentence imposed by the 4th District Court as being without authority and void, (Appendix B).

On April 11, 1991 the Appellant requested

leave to appeal to the New York State Court of Appeals arguing that, (1) the ruling below still remains in error of, local law, general State law, and violates fundamental Constitutional rights, Appendix J(10-11).

On June 10, 1991 the Court of Appeals, in its opinion, found there is no question of law presented which ought to be reviewed by the New York Court of Appeals, Appendix A.

REASON FOR GRANTING THE WRIT

This case raises questions similar to those resolved by this Court in Marbury v. Madison where Marbury, an officer duly appointed by legislated law, was to be removed from office at the will of the Chief Executive, this Court found such an act, simply at the discretion of the Executive Branch of government, not warranted by the

law as enacted by duly elected Legislative Representatives, to be void. In the instant case, we have "an act deemed by the Court not warranted by law", (Marbury v. Madison, supra, at 162.

One fundamental principle of our society, which this Union of States and its Government have always strived to achieve, as enunciated by this Court in Marbury, is to assure that we as a society be "a government of laws, and not of men", Marbury v. Madison, supra, at 163.

Natural law, and Legislated law, never declared unconstitutional by the New York State Court's, cannot be implicitly deemed unconstitutional, by denying it effect, nor can general State and Local legislated laws on fences be dangerously modified by a Court to remove the safety and welfare requirements provided by elected Legislators.

This Courts opinion was clearly enunciated by Chief Justice Marshall in Marbury v. Madison, supra, and its pertinent to quote the following relevant passage:

> "Certainly, all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution,is void.
>
> This theory is essentially attached to a written constitution, and is, consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not, therefore, to be lost sight of, in the further consideration of this subject." Id, at 177.

It is constitutionally established we are

> "a government with limited ... powers", Id, at 176-177.

And, by this Courts theory, as enunciated by Chief Justice Marshall, neither the Executive Branch, Legislature or a Court can

be allowed to overthrow what is Constitutionally valid law. And, duly established law by elected New York State Legislators that explicitly defines the purpose and function of a fence in general law of State-wide application, can't be selectively overthrown in this Appellant's case, and certainly Court's cannot overthrow self-evident Natural law established by the Creator.

Certainly all those who have legally defined a fence must have contemplated that it should form a basis for all fence law, and therefore the legal definition of a fence, as defined and used in the general law of the State of New York, and universally defined, the same way, throughout this Nation, Appendix J(5), should by this Court's theory be attached to the Town of Oyster Bay Fence

Ordinance Sec. 327. This Appellant's rose vines are shaped upon trellis arbors that vary slightly in concept and design in different area's of my yard. Certainly this difference does not create the basis for coloring them a fence, when the trellis arbors are separate and distinct, do not shut in the land, support ivy, rose and grape vines, and are located on private property, behind a legal six-foot stockade fence, that bars public entry, Const Amends 1, 5, 9, 14.

> This Court has frequently ruled that; "equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights of property". Packard v. Banton, 264 U.S. 140, 143, 44 S.Ct. 257, 68 L.Ed. 596 (1924), and cases there cited.

The preamble to the Universal Declaration of Human Rights affirms that vested rights "be protected by the rule of law", 183rd

meeting of the U.N. General Assembly (1948), and as eloquently stated by Chief Justice Marshall in Marbury;

> "The very essence of Civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection" (Marbury v. Madison, supra, at 163, emphasis added).

The fundamental principle of protection under the rule of law as advanced by Chief Justice Marshall in Marbury is also recognized in the dissenting opinion of Justice Holmes in Tyson when he said;

> "A state legislature can do whatever it sees fit to do...and courts should be careful not to (read into them) conceptions of public policy that a particular court may happen to entertain." Tyson & Brother, etc. v. Banton, 273 U.S. 418, 445, 446, 47 S.Ct. 426, 433, 434, 71 L.Ed. 718 (1927).

If State Court's believe safety and welfare policies, or statutes, of elected

representatives are perhaps unwise, this does not provide a Constitutional basis for setting them aside. In the absence of any Constitutional restriction, a State is free to adopt its own laws, or legal definition of a fence,

> "...courts do not substitute their ... beliefs for the judgment of Legislative bodies, who are elected to pass laws." Ferguson v. Skrupa, 372 U.S. 726, 730, 83 S.Ct. 1028, 1031, 10 L.Ed.2d 93 (1963).

This Court certainly must recognize that its powers were limited by the Founders, who knew that **unlimited power** could not be placed in the hands of a few men, so too State Court power is not unlimited, and

> "that those limits may not be mistaken or forgotten, the Constitution (was) written." (Marbury v. Madison, supra, at 176, emphasis added).

Our Constitution does not speak in so many words of a right to be protected by

legislated law, as it is clearly defined, or the right to be equally protected under self-evident Natural law, or the right of duly elected Legislative bodies to enact their own constitutional laws, but the Ninth Amendment expressly recognizes fundamental personal and State rights such as these, to prevent any perverse application, as in the instant case, where "pieces of trellis work" were deemed a fence, when the Respondent's attorney alleged them to be a fence, "for lack of a better word", Trial Transcript, pg 67, lns 1-7 Appendix K(9), and pg 42, lns 9-10, Appendix K(7).

The meaning of Social rights and Property rights as defined by our Constitution should not be so diluted as to be loathsome to the premises established by the Framers, by

selectively suppressing this Rosarian's thoughts, ideas, and feelings for Nature, or suppressing the rule of law, etc., which are imbedded in the due process of law and

> "which lie at the base of all our civil and political institutions", Herbert v. State of Louisiana, 272 U.S. 312, 316, 47 S.Ct 103, 104, 71 L.Ed 270 67 (1934).

As no Court can legally suppress the protections of fundamental State or personal rights, then certainly Court discretion cannot be used as leverage to abridge those fundamental rights, especially when there is a compelling reason for the New York State Legislature to have clearly defined a fence as

> "enclosed in a manner designed to exclude intruders", N.Y.State Penal Law, Title I, Sec. 140.10(a), Appendix I(3).

When a State legislature exercises its

power to protect the lives and health of its people, by clearly and legally defining a fence, in its general law, a State Court should not abridge State-wide Legislative intent, by effectively removing the safety and welfare restrictions placed on fences in both general State and local law, by the elected Legislators. (Const. Amend. 14).

Not so many years ago this Court stated the Due Process Clause of the Fourteenth Amendment protects those vested liberties

> "so rooted in traditions and conscience of our people as to be ranked as fundamental "Snyder v. Com. of Massachusetts, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934).

All fundamental personal rights were protected from abridgment by the Framers, therefore, if we hold to the principle that we are a government of law and not of men, as rooted in the traditions and collective

conscience of our people, then the fundamental constitutional right to be protected in accordance with clearly defined general State law, or the self-evident law's of Nature, cannot be denied, by either the Legislative, Executive or Judicial Branch of Federal or State Governments, to dootherwise

> "would subvert the very foundation of (our) written Constitutions (State and Federal)." (Marbury v. Madison, supra, at 178.

This Court has held in Marbury that the denial or disparaging of the fundamental principles and rights the Framers provided for, in our written Constitution would certainly be "repugnant to the Constitution", and hence "void". Therefore "the very essence of judicial duty" demands that the rule of law guide New York State Court's in the exercise of their jurisdiction, and that they

not be in conflict with the Constitution, Marbury v. Madison, supra, at 177-8).

It is not substantive due process to selectively burden the incidental accessory use of this Appellant's private property, under color of fence law as this does not afford the protection inherent in a Constitutional government, where law is defined in the best interest of the people, and where men are ruled by the defined law, or assure the Framers intention that the legislated law, **as duly established opinion** shall be paramount to the discretion or opinion of a few men, and bring in its application **an equality of justice less tainted with individual prejudice**, Const. Amend. 14.

The entire fabric of our Nation, and its experiment with Constitutional law,

guaranteeing personal fundamental rights, should not be so diluted by the ruling in the instant case, as to allow bald assertion, rather than Constitutional law, to be the guide to a Court's jurisdiction. The Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the right to be protected or treated equally under explicitly defined fence law, and the right to be protected under our law to equal treatment under self-evident Natural law, is of a similar order and magnitude as other fundamental rights protected by the Constitution (Const. Amends. 1, 5, 9, 14).

CONCLUSION

The subject matter of the instant case, trellis arbors and fences, may have seemed trivial to the New York State Court of Appeals, and the other State Courts I've

argued this case before, but we certainly do not live in a world where Court opinion can physically change apples into oranges or trellis arbors into a fence. State Courts should not lose sight of the magnitude of the tyranny involved in debasing Constitutional law, Natural law, or vested State, Federal and Personal rights. To lose sight of the consequences of establishing the opinion of men over the rule of law, as clearly and legally defined in established State law, is repugnant to Constitutional principles.

The Framers molded and defined our Constitution, in the fire of their cumulative experience, tempered it by their will, and fashioned a document that would outlaw the torture and pain denial of liberty imposes on man, and provided us a foundation for the legal pursuit of happiness under the rule of

Constitutional law. The Framers knew the consequences of social misery and man's inhumanity to man, and provided us the legal framework, for the furtherance of ethics, morality and personal rights as the Creator meant it should be. The Framers sought, by the Bill of Rights and the Constitution, to reaffirm and protect liberty, by explicitly defining some of our Fundamental rights, so their children and ours would be free to think, to express themselves, to revere Nature as the creation of a superior intelligence, in their own way. To debase the Constitution and overturn self-evident law, which is the expression of Gods will, violates the imperative the Framers understood, that God did not create man to become slaves of men, or slaves of oppressive government, but created man to be free, to

care for our world, and rever it, each in his own humble way, which in sum, attains God's mightiest aspiration, a world where men practice what is morally right. The Framers did not create our government to interfere in their affairs to the extent of denying their freedom in the private gardens of their established homes.

Is this Rosarian's freedom to design differing trellis arbors any different from the freedom to design a little different car or a little different home, etc.? Is the lexicographic skill of the Respondent, to vaguely define a trellis arbor to the Court as a fence "for lack of a better word", a valid Constitutional basis for a Court giving no effect to fundamental State and personal rights, general law or compelling public safety and welfare concerns? The Framers

always rested upon a far broader base of historical and self evident Natural law as the basis for their jurisdiction, and "no law", provision, ruling or opinion was ever sanctioned by this Court as being able to abridge "deny or disparage" the vested freedoms enumerated or implied to the people, or the States, by the Constitution. Vested freedoms cannot be denied, just because an idea, person or object is a little different. This Nations progress was founded upon freedom of thought, ideas, and their expression and it is the Constitution that provides a foundation for Liberty and progress by accommodating diversity among individuals and States, Const. Amend. 1, 9.

The instant case warrants this Courts attention because under our Constitution fundamental rights are protected from

abridgment by either the Federal Government, or the States, and their respective Courts, Const. Amend 5, 14; and see Bolling v. Sharp, 347 US 497, 74 S.Ct. 693 (1954) among others.

Any violation of the First, Fifth, Eighth, Ninth and Fourteenth Amendments, by State Court's giving them no effect, or giving no effect to the defined meaning of the words, phrases and objects of this world, or no effect to self-evident Natural law, injures not only this Appellant, but injures the inherent dignity and meaning of our vested inalienable rights, carefully defined by the Framers when they sought to explicitly define some of our fundamental rights.

Certainly the Framers intended that the Courts should not substitute their day to day beliefs, for the judgement of duly constituted Legislative bodies elected to

pass laws. The means used by the 4th District Court, to deem trellis arbors a fence, and remove the stringent public safety and welfare requirements for a fence, and selectively increase requirements for light and air on this Appellants private property, does not justify the end, of (1) fundamental 1st, 5th, 8th, 9th and 14th Amendment principles, and personal rights, (2) vested States rights, (3) the safety and welfare of the general public, (4) established traditions of enacting law by duly elected representatives, and (5) the Constitutional imperative of the Framers to separate governmental functions, so unlimited power, would be divided.

This Court, as legal Guardian of the Constitution, cannot close its eyes to a perverted debasing of the fundamental moral

and legal principles men have always sought to protect from the tyranny, or the discretion, of a few men. The Framers created a Nation where defined law is rooted in the traditions of our people, and it does not allow for Constitutionally invalid convictions that overthrow vested rights, as this is not morally or legally right. This Appellant is not guilty of the offense for which convicted.

For the reasons set forth above, a writ of certiorari should issue to review the judgment, sentence and opinions of the New York State Courts in this matter.

In the event this Court elects not to address the fundamental Federal questions presented in this writ, at the present time, it should not preclude the further

consideration of this Appellants important and valuable personal rights, and vested States rights threatened in the instant case. Therefore the writ should issue, and the matter remanded back to the State Courts for redetermination, for it is essential that Human Rights be protected by the rule of law, as a normal standard of justice, and that men not continually be compelled to defend themselves against tyranny and oppression. State Court's must give effect to vested Fundamental rights, Constitutional law, general State law and Local ordinances, in the course of their Judicial proceedings, and cannot so flippantly disregard the legal nexus which binds this Appellant, and each State, to the rest of the Nation, the Constitution of the United States of America.

Copy 24

DATED: October 1, 1991.

Respectfully submitted,

Paul J. Cafaro

PAUL J. CAFARO
Appellant, pro se

91-654

(2)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PAUL J. CAFARO
- APPELLANT

vs.

PEOPLE OF THE STATE OF NEW YORK
- RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK APPELLATE TERM OF THE SUPREME COURT FOR THE 9TH & 10 TH JUDICIAL DISTRICTS

APPENDICES A-L

PAUL J. CAFARO
PETITIONER, PRO SE
214 DANIEL ROAD NORTH
N. MASSAPEQUA, NEW YORK 11758

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Copy 34

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STATE OF NEW YORK COURT OF APPEALS

THE PEOPLE OF THE STATE OF NEW YORK
Respondent,

vs.

PAUL J. CAFARO
Appellant

RULING

I, Richard D. Simons, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein, there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at: Rome, New York
June 10, 1991

Richard D. Simons
Associate Judge

APPENDIX A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM
9TH AND 10TH JUDICIAL DISTRICTS

PRESENT: DiPaola, P.J.,Stark and Ingrassia

THE PEOPLE OF THE STATE OF NEW YORK
Respondent,

vs.

PAUL J. CAFARO
Appellant

Cal. No. 90-248
Decided: March 18,1991

RULING

Appeal by defendant from a judgment of the District Court, Nassau County, (Decker, J., at trial and sentence) rendered on April 28, 1989 convicting him of two counts of Section 327 of the Code of Ordinances of the Town of Oyster Bay and imposing sentence of a conditional discharge that defendant remove the violation by June 30, 1989 or be subject to a fine of $2100

plus $10 per day for each additional day the violation remains after June 30, 1989.

Judgment of conviction unanimously modified on the law by vacating that portion of the sentence which sought to impose an additional fine of $10.00 for each day the violation remains after June 30, 1989 and as so modified, affirmed.

Defendant was charged with maintaining, on the dates alleged, fencing in excess of the six foot height permitted under section 327 of the Town Ordinance. The testimony at the trial and the exhibits admitted into evidence were sufficient for the court to find that the structure constituted a fence which exceeded the height limitation specified in the ordinance. The dismissal of an earlier action charging a similar

violation was not dispositive of the instant action. Additionally, contrary to defendant's contentions, the courts have upheld provisions of local zoning laws based solely upon aesthetic considerations (see generally, 1 Anderson, New York Zoning Law and Practice (3rd ed) Sec. 7.16). The court notes that the portion of the sentence which provided for fines on a daily basis until the violation was removed was improper as the court is without authority to impose fines for violations committed in futuro (see, People v Koston, Appellate Term 9th and 10th Jud Dists, NYLJ June 17, 1988, leave to appeal denied 72 NY2d 920, 958). The other issues raised on this appeal were considered and found to be without merit.

DISTRICT COURT OF THE COUNTY OF NASSAU
FOURTH DISTRICT : HICKSVILLE PART

THE PEOPLE OF THE STATE OF NEW YORK
Respondent,

vs.

PAUL J. CAFARO
Appellant

Index No. 2920/87
Filed: Jan 27,1989

DECISION AFTER TRIAL

The defendant was charged in a nine count information with violations of the Town of Oyster Bay Code of Ordinances. The first two counts (*) involve a perimeter fence at a height in violation of the ordinance.

The trial was held on November 2, 1988 before the Court in Hicksville. The People restricted their proof to the violations under counts I and II. Their witness was the

Chief Building Inspector for the Town who described the fencing materials surrounding defendant's property on three sides as 12 to 14 feet high and dangerously close to power lines. Photographs were admitted into evidence in support of the People's position that violations existed.

The defendant claims that what the People complain of is not fence but trellis and as such is not covered by the ordinance.

The Court has examined the material and memoranda submitted by both sides as well as the exhibits submitted and in evidence.

Section 327 of the Town of Oyster Bay Code of Ordinances requires that fences should not exceed six feet in height.

The Court finds that what the People describe as a fence on the defendant's

property violates the ordinance and must be removed. If the defendant wishes to maintain a fence on the border of his property, it must be of the proper material and height.

The defendant is to appear in Court on February 22, 1989 at 9:30 a.m. for sentencing.

Dated: January 26, 1989

_____

George K. Decker
Judge, District Court
of Nassau County

(*) Counts I and II:

Alexander Pankoff, Chief Zoning Inspector, of the Town of Oyster Bay, Department of Planning and Development, Oyster Bay, New York, 11771, being duly sworn, deposes and says that on the 16th day of September 1987, the 8th, 9th and 22nd

days of October 1987, at premises located at; 214 Daniel Road North, North Massapequa, New York, in the Town of Oyster Bay, in the County of Nassau, also known as Section 52, Block 481, Lot 23, Zone D, on the Land and Tax Map in the County of Nassau, the defendant did willfully, wrongfully, and unlawfully violate, the provisions of the Code of Ordinances of the Town of Oyster Bay as follows:

COUNT I

Violation of the Town of Oyster Bay Code of Ordinances, Appendix A, Section 327, to wit: Deponent observed that approximately sixty linear feet (60) of fencing running easterly and westerly along the northern rear line, is made up of black plywood, wire, six foot (6') stockade below and as a

base with all the aforementioned parts and pieces and three inch (3") nails protruding to the rear, and further that all this is approximately ten feet (10') high. The height, and improper construction is not permitted and is a violation of the ordinance.

COUNT II

Violation of the Town of Oyster Bay Code of Ordinances, Appendix A, Section 327, to wit: Deponent observed that approximately sixty linear feet (60) of fencing running along the westerly perimeter was interwoven with assorted, so called trellises, odd pieces of panelling, and interwoven with each other and ranging in height from six feet (6') to eight (8) or nine (9) feet, parts of it are rotted and leaning outward

and all of the interwoven and odd pieces and height is not permitted and is a violation of the ordinance.

AMENDMENT 1
TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5
TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 8
TO THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9
TO THE UNITED STATES CONSTITUTION

The enumeration in the Constitution of certain rights shall not be construde to deny or disparage others retained by the people.

AMENDMENT 14
TO THE UNITED STATES CONSTITUTION

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEW YORK STATE STATUTES

APPENDIX I

NEW YORK STATE
PENAL LAW, TITLE E, SECTION 80.05 (4)

4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

NEW YORK STATE
PENAL LAW, TITLE E, SECTION 80.15

Multiple offenses. Where a person is convicted of two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, and the court imposes a sentence of imprisonment or a fine or both for one of the offenses, a fine shall not be imposed for the other.

NEW YORK STATE
PENAL LAW, TITLE I, SECTION 140.10(a)

Criminal trespass in the third degree.

a person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property

(a) which is fenced or otherwise enclosed in a manner designed to exclude intruders;

NEW YORK STATE
TOWN LAW, ARTICLE 16, SECTION 261

Grant of power; For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by ordinance to regulate ...

NEW YORK STATE
TOWN LAW, ARTICLE 16, SECTION 263

Purposes in view; regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable

consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

NEW YORK STATE
TOWN LAW, ARTICLE 16, SECTION 268(1)

Enforcement. (Violations are deemed misdemeanors) for the purpose of conferring jurisdiction upon the courts ... **and for such purpose only** all provisions of law relating to misdemeanors shall apply to such violations.

TOWN OF OYSTER BAY, NEW YORK
CODE OF ORDINANCES
ZONING, SECTION 327, OR
SECTION 246-144 (AMENDED 8-9-88)

Fences. In D residence districts, a fence as defined in this Ordinance (Chapter) not exceeding six (6) feet in height, may be erected on the rear lot line, portions of the side lot lines and interior portions of the lot, provided that such fence along the rear, sides and within the lot shall not exceed toward the street a greater distance than the required front setback as stated within this Ordinance (Chapter) or the front setback of the dwelling on the property, whichever setback is greater. With respect to all other lot lines, a fence not exceeding four (4) feet in height may be erected provided that the height of any

fence erected along any front property line shall be measured from the existing elevation of the center line of the road adjacent to such a fence, and provided further that such height, so measured, shall not exceed two and one-half (2.5) feet at any point within a radius of thirty (30) feet of the corner formed by any intersecting roads or highways. The provisions herein shall apply to hedges or other densely growing shrubbery or trees known as living fences ("living fences").

TOWN OF OYSTER BAY, NEW YORK
CODE OF ORDINANCES
ZONING, SECTION 246-39(E)

Fencing.

(1) Adequate fencing shall be provided to prevent accidental entry and unauthorized use of the pool, which fencing shall be at least two (2) feet distant from the pool. Such fencing shall be erected and maintained so as to completely enclose at least the outside perimeter of the pool, or the perimeter yard in which the pool is situated.

(2) Fences constructed under the provisions of this section shall be constructed of metal, wood or other suitable material, shall contain no openings or projections which would permit hand or toe holds sufficient for climbing, as determined

by the Department of Planning and Development. The fence shall be at least four (4) feet in height from ground and be no more than one (1) inch from the ground at the bottom and be supported by posts that are at least eight (8) feet on center.

(3) Gates or doors. All gates or doors must be equiped with a self closing, self latching device located on the inside of the gate or door. Such gate or door must be securely closed and locked at all times when not in actual use.

TOWN OF OYSTER BAY, NEW YORK
CODE OF ORDINANCES
ZONING, SECTION 326

Accessory buildings.

"In a D Residence District accessory buildings may ... not exceed eighteen (18) feet in height ...".

FEDERAL QUESTIONS RAISED

APPENDIX J

FEDERAL QUESTIONS RAISED
IN COURT OF FIRST INSTANCE

In Defendants Memorandum submitted to the trial court stated:

(1) "The issue in this case is whether the defendant's inalienable right to the pursuit of happiness (granted by the Constitution of the United States of America to all its citizens) includes the planting on defendant's private property, safe and harmless living vines, that require supporting trellises to provide the vines a normal growth height similar to other peoples shrubbery (as vines are climbing plants unlike bushes or shrubbery which are woody plants which do not require support), without the plaintiff imposing his decorative tastes and depriving the defendant his right to the peaceful enjoyment of life and liberty by distorting the truth and redefining the defendants safe and harmless, spaced, non-enclosing, separate, distint, discontinuous and decorative trellises (7.5 to 10 feet tall) supporting living vines (to a normal and similar height other peoples shrubbery can grow), on his own property and interior to the boundary of his property, as a fence, when plaintiff and plaintiffs witness know the difference between a trellis and a fence, as testified to under oath making this improper conduct an obstruction of justice."

(2) "Plaintiff tried to violate the defendant's civil, human, religious and constitutional rights once before in 1983 when he called defendant's patio umbrellas a fence, but the judge dismissed and threw the case out of court."

(3) "For the defendant to be solely the object of selective enforcement of this "trellis law", in violation of the 14th amendment, makes it a cruel and unusual punishment, in violation of the 8th amendment, and punishment under a "trellis law" that does not exist for trellises and that is selectively applied denies just and fair due process, in violation of the 5th amendment, and to prohibit the God given right to grow ivy on ones private property in appreciation of Nature and God's creations, in the manner (upon harmless supporting trellise) that brings a spiritual joy equivalent to what other people feel when planting their shrubbery, is a violation of the 1st amendment of the Constitution of the United States."

(4) "Defendant has consistently demonstrated with credible and convincing evidence and testimony that the plaintiff did so intentionally, unjustifiably and with malace to do harm to the defendant, distort the truth and fabricate a story that defendants trellises are a fence, in direct contradiction of the prima facie evidence in this memorandum, supporting defendant's previous testimony and submissions to the court showing that the defendant's trellises are not a fence."

FEDERAL QUESTIONS RAISED
ON APPEAL TO THE APPELLATE TERM OF THE
SUPREME COURT FOR THE 9TH AND 10TH DISTRICTS

In this Appellant's response to Respondant's appellant brief stated:

(1) "Society, through its law makers has defined certain actions to be criminal. This was done so that an individual could demand from others, including municiple corporations, certain regularities of behavior, and to accord to others the expectation that he too will behave predictably. Consequently, for the purpose of securing regularity in important kinds of interpersonal behavior, societies enact laws, the violation of which is a crime."

(a) "Nowhere in this Nation has the planting of rose or ivy vines on ones private property, nor the use of a supporting arbor, made up of trellis lattice, 2x3's, lauan, etc., been defined by the legislature as a criminal action."

(b) "Our founding Fathers were men of strong will and determination, to ensure to us the blessings of liberty, they, required that the activities of government not exceed limits specified by law. They created three autonomous branches of government, to divide unlimited power, each to check any imbalance in the coercive activities of the others."

(c) "Government, like the individual or a corporation, is expected to behave predictably and therefore is required to act in accordance with law - the Constitution - and the Constitution requires that unlimited powers not be in the hands of any one individual, governmental body or corporation, the violation of this Constitutional imperative is a crime and punishment for this crime should be exemplary and severe."

(d) "I built my home over the last two decades with a plan and a purpose to fashion it in a victorian mold, it was done with my own two hands on weekends. I invested considerable time, money and effort in the development of my property, and it expresses my individual character. It is my showplace and the architecture of my home including its rose arbors have a distinctive victorian antiquity. I happen to appreciate, and have a sentimental value for, things historical and I am particularly attracted to the victorian era. I have implemented at great expense a victorian desing to all my real property. I am granted this right of expression by the first amendment of the Constitution."

(e) "The plaintiffs illegal and discriminatory exercise of police power (consistent with his pattern of intentional and purposeful discrimination in the administration of an otherwise nondiscriminatory law), has no relation to

public health, morals, safety or welfare. Both, the illegal construction (of the fence ordinance) and mis-use of police power is highly selective and discriminatory and should be set aside by this court as unconstitutional, ultra vires, and void."

(2) In my brief clarifying the Constitutional issues and the conflict with fence law as developed over our history as a Nation, quoted from American Jurisprudence:

(a) "Generally, a fence is an **INCLOSING** (structure or barrier)about a field or other space, or about any object, intended to **PREVENT INTRUSION** from without **OR STRAYING** from within. **WITH RESPECT TO REAL PROPERTY**, it is a visible or tangible obstruction interposed between two portions of land so as to part off and **SHUT IN THE LAND** ..." (emphasis added); FENCES, 35 Am.Jur.2d, Sec. 2, p. 407; FENCES, C.J.S., Sec. 1., p. 258; Van Gorder v. Eastchester Estates, Inc., 207 Misc 335, 137 NYS2d 789; Shamberg v. Lincoln, 174 Neb. 146, 116 N.W.2d 18 (1962); Parrish v. Hainlen, 124 Colo 229, 236 P2d 115; Polizzi v. Lotz, 240 La 734, 125 So2d 146 ... etc.

(3) In this Appellant's response to the Respondent's brief stated:

(a) "The plaintif and his attorney's are not exempt from the equal protection clause of the Federal Constitution. It applies to

all agencies of the government and whoever else, by virtue of public position under State government, deprives another of any right protected by the fourteenth amendment and thereby violates the Constitutional inhibition."

(b) "The discriminatory enforcement of an irrational construction of the fence ordinance practiced by a municiple corporation over the years, against this defendant, should have been treated, like in 1983, as an application to the court for dismissal, or quashing of the prosecution, upon Constitutional grounds."

(c) "The rules governing an individuals rights and range of choice arises out of the Constitution, and an individuals value system; the set of beliefs, attitudes, and values that motivate his choice or preferance for anything from religion to rose arbors that comprise his lifestyle are protectected by Constitutional principles."

(d) "The Town of Oyster Bay's illegally discriminatory and irrational actions against this defendant, under color of law, to deny this homeowner his Constitutional right to his own lifestyle is challenged on several grounds:"

"... Its violative of fundamental human rights and first amendment principles ... a selective, unreasonable and discriminatory

enforcement, under color of an illegal construction of valid law, violative of fundamental fourteenth amendment principles ... resulted in an excessively harsh fine and punishment which violates fundamental eighth amendment principles ... is not a reasonable or legitimate interest of a municiple corporation (to) violate fundamental ninth amendment principles ... denying this defendant equal protection of law ... is a violation of the Constitutional imperative and mandate against the arrogation of power in a few hands ... and violates principles as they have been understood by the traditions of our people and our law. This is antithetical to the Nation's experience and ideology which protects an individuals freedom of choice, privacy and lifestyle as part of an integrated society."

(e) "Humanity, rights and happiness is the moral imperative that takes precedence over the exercise of unconstrained police power. The Framers of our Constitution knew this as we also know. Rights are interperated in the Constitution as needs and desires for religion, speech, etc. and it is explicit in stating that rights not enumerated in the body of the Constitution should not be construed to be denied to the people by the government or by a corporation."

(f) "The intent of the United States Constitution is clearly stated in its preamble that it was conceived to secure the blessings of liberty (our human rights), to ourselves and our posterity by establishing justice (humanity) and to insure domestic tranquility (happiness). This was the moral imperative for which our founding fathers duly ordained and established our Constitution. They were worried about excesses under the guise of police power that would strip us of our human rights, humanity and happiness."

(g) "The Constitution is the only authority capable of ensuring that unconstrained activities of a government or a corporation do not exceed limits specified by law. But, we well know, and history is the proof that the arrogation of unconstrained power can even be used to overrule Constitutional principles and human rights. At that point tyranny will have taken full root and the blessings of liberty, that the framers of our Constitution so carefully passed to us, will be lost to our posterity and replaced with unconstrained unlimited police power. The Constitution not only forbids discriminatory laws making distinctions without rational basis, it also forbids the discriminatory enforcement of nondiscriminatory laws ... in violation of the equal protection clause of the fourteenth amendment of the United States Constitution."

(h) "**Wherefore**, in light of the history of the First, Eighth, Ninth and Fourteenth Amendment principles, Decisional law, State law, Town law and basic Human Rights as outlined above and applying their requirements to the instant case, and in view of all that has been said herein, this defendant requests this court to hold all the plaintiff's actions at issue ultra vires, unconstitutional, invalid and void and that the judgment and sentence of the trial court be reversed on the law and the facts, with prejudice.

FEDERAL QUESTIONS RAISED
ON APPEAL TO THE NEW YORK STATE
COURT OF APPEALS

In this Appellant's application for leave to appeal to the New York Court of Appeals stated:

(1) "That important questions of law have been violated by the plaintiff and erroneously affirmed by the lower courts in the above captioned case. This case should be reviewed by the New York State Court of Appeals, not only for the safety and benefit of the public welfare at large but because the decision of the lower court is clearly in error of law and this defendant's Constitutional rights."

(2) "It is clearly impossible by the direct evidence alone for this defendant's separate, distinct and discontinuous trellis arbors that do not shut in the land to be considered a fence and this defendant's Constitutional rights under the 1st, 8th, and 14th amendments of the Constitution have been violated.

(3) "This defendant asks for continuance and review of my appeal by the Court of Appeals so that I may show how the lower courts errors of law have adversely affected not only this defendant's Constitutional rights, but significant public policy issues

with regard to the safety and welfare of the general public, who's interests are protected by a fence and the publics rights as concerns the ownership of private property."

(4) "For the trial court to stifle an individuals right to incidental decorative design and creativity with respect to a mans private property violates the First Amendment of the Constitution. Fence law cannot be construed in such a way as to endanger Constitutional principles or the public safety or welfare. It must be remembered that with respect to real property, a fence, to be a fence ... must be a visible or tangible obstruction that shuts in the land, and any arbitrary use of the doctrine of equivalence, with respect to time delay relative to intrusion, is not a proper equivalence, because ... a fence with respect to real property must shut in the land with a visible or tangible obstruction, which time obviously is not. This defendant's trellis arbors are not equivalent to a fence, just like a basketball player, or a single tree, or a patio umbrella, etc., is not equivalent to a fence."

RELEVANT PASSAGES FROM TRIAL TRANSCRIPT

RELEVANT PASSAGES FROM TRIAL TRANSCRIPT AND PHOTOGRAPHIC TRIAL EVIDENCE

TRIAL TRANSCRIPT - Page 7, lines 3-10.
Direct Questioning of
PLAINTIFF'S EYE WITNESS

Q "Does the defendant have a six-foot fence around his entire premises?"

A "Yes, he does."

Q "And did he get permission by virtue of a variance in order to put that fence there?"

A "Yes, he did."

Q "So that fence is legally there, six foot?"

A "Six-foot stockade fence is legally there."

TRIAL TRANSCRIPT - Page 8, lines 1-4.
Direct Questioning of
PLAINTIFF'S EYE WITNESS

Q "So he has a legal six-foot fence around his entire premises?"

A "Yes, he does."

TRIAL TRANSCRIPT - Page 15, lines 1-5.
Direct Questioning of
PLAINTIFF'S EYE WITNESS

Q "What else is between those two fences?" (the stockade fence and this Appellant's trellis arbors) "What's that, wire?"

A "Yes. That's commonly known as turkey wire."

TRIAL TRANSCRIPT - Page 15, lines 9-15.
Direct Questioning of
PLAINTIFF'S EYE WITNESS

Q "What is the purpose of that turkey wire, if you know?"

A "I can't venture a guess on that."

Q "It has no -- there's no reason that should be there with the fence?"

A "Probably didn't know what to do with it, so he put it in there."

TRIAL TRANSCRIPT - Page 15, lines 18-24.
Direct Questioning of
PLAINTIFF'S EYE WITNESS

Q "This is Plaintiff's 1C. I ask you what you observed in that photograph."

A "I observed the six-foot stockade fence as originally stated, some plastic pieces of fencing, corrugated green, corrugated plastic, plywood paneling, all vertically stacked."

Q "Is that secured to those fences, all that?

A "That is just standing up and interwoven in and along, up against each other, secured to nothing."

TRIAL TRANSCRIPT - Page 20, lines 14-18.
Direct Questioning of
PLAINTIFF'S EYE WITNESS

Q "So the eastern end might be --"

A "Different. Just the whole thing is a little different concept there. Some paneling, but there's other trellises there and other kinds of fencing there, specifically along the rear yard lines."

TRIAL TRANSCRIPT - Page 28, lines 19-25.
Cross-Examination of
PLAINTIFF'S EYE WITNESS

Q "Didn't you file one (complaint) back in 1983, substantially the same, the same matter about a fence?

A "Yes."

Q "And wasn't that dismissed by Judge Griffin?"

A "I can --"

Mr. Ehrlich (Town Attorney):"Your Honor --"

TRIAL TRANSCRIPT - Page 29, lines 1-25.
Cross-Examination of
PLAINTIFF'S EYE WITNESS

Mr. Anderson (Defendant's Attorney): "It's a matter of public record."

Mr. Ehrlick: "Your Honor, the People will stipulate that the counts against the Cafaro's based on the 1983 information were dismissed for lack of jurisdiction."

"Our inspectors were unable to penetrate the gates, the six-foot gates that go out to the front of the house, and couldn't even get to the door. And, therefore, having been unable to serve them at any point in time, People were forced to dismiss for lack of jurisdiction. They will stipulate to that.

Q "Have you, since those complaints have been filed, also filed other complaints against the Cafaros?"

A "Yes, I'm pretty sure I did."

Q "And they're returnable on a different date, yes?"

A "Yes."

Q "How do you define a fence?"

A "How do I define a fence?"

Q "Yes."

A "A combination of building materials to form a structure."

TRIAL TRANSCRIPT - Page 30, lines 1-25.
Cross-Examination of
PLAINTIFF'S EYE WITNESS

Q "And what does that structure do?"

A "Contains something that separates something.

Q "And how would you define a trellis?"

Mr. Ehrlich: "Objection. No relevance."

Mr. Anderson: "Yes, there is."

The Court: "I'll permit the question."

Cross-examination.

A "I would like to first know what the definition of the word trellis is."

Mr. Anderson: "That's what I'm asking you. How would you define it? And you ask how I would."

A "I would not define a trellis as a fence."

Q "And what would be the difference between a trellis and a fence, as far as you're concerned?"

A "To the best of my ability, conjecture is that trellis is something that you would like to, let's say, have a climbing vine type of plant growing somewhere in your yard, as a backdrop for perhaps some additional plantings placed indiscriminately in your yard, but certainly not acting as a fence."
"That's my definition of it, my outlook on it."

Q "In the Town of Oyster Bay Code, are there any restrictions as far as trellises are concerned?"

TRIAL TRANSCRIPT - Page 31, lines 1-7.
Cross-Examination of
PLAINTIFF'S EYE WITNESS

A "Not to my knowledge."

Mr. Ehrlich: "Objection, your Honor."
"It's still not relevant."

The Court: "I'll permit the question."

Mr. Ehrlich: "Okay."

The Court: "Overruled."

TRIAL TRANSCRIPT - Page 31,lines 15-18.
Cross-Examination of
PLAINTIFF'S EYE WITNESS

Q "Were the panels removed?"

A "Panels were readjusted with a latticework nailed onto them, to create a, evidently nicer effect at the same height."

TRIAL TRANSCRIPT - Page 42,lines 6-10.
Cross-Examination of
DEFENDANT

Q "That's what your trellis looks like to the neighbors?

A "Yes."

Q "How long along your property line, for lack of a better word, I'll call this a fence, does this fence run?"

TRIAL TRANSCRIPT - Page 49,lines 12-20.
Cross-Examination of
DEFENDANT

Q "What do this fiberglass and these turkey wires have to do with your trellis?"

A "Well, initially they were put up

as a trellis but they crumbled. I pulled them all out and we're using the wood latticework now."

Q "The parts where it's not two feet away, will you agree that you're in violation there?"

A "No, because there's no setback requirements on trellises."

TRIAL TRANSCRIPT - Page 50,lines 15-22.
Cross-Examination of
DEFENDANT

Q "What is the definition -- I'm going to reverse your attorney's question. What is the difference between a fence and a trellis?"

A "A fence is a continuous structure enclosing an area and bounding a property. And more or less, it's on the property boundary line. And a trellis is a separate, discontinuous structure which does not enclose an area."

TRIAL TRANSCRIPT - Page 65,lines 13-22.
SENTENCING HEARING

The Court: "Mr. Cafaro, is there anything you'd like to state before I impose sentence?"

"What the People, or what the Town is recommending, if you do not conform to the regulations, is indeed harsh. A period of incarceration on a violation of a Town ordinance is a harsh sentence."

Mr. Cafaro: "It's obviously an injustice, your Honor. I'd like to appeal this to a higher Court."

TRIAL TRANSCRIPT - Page 66,lines 23-25.
SENTENCING HEARING

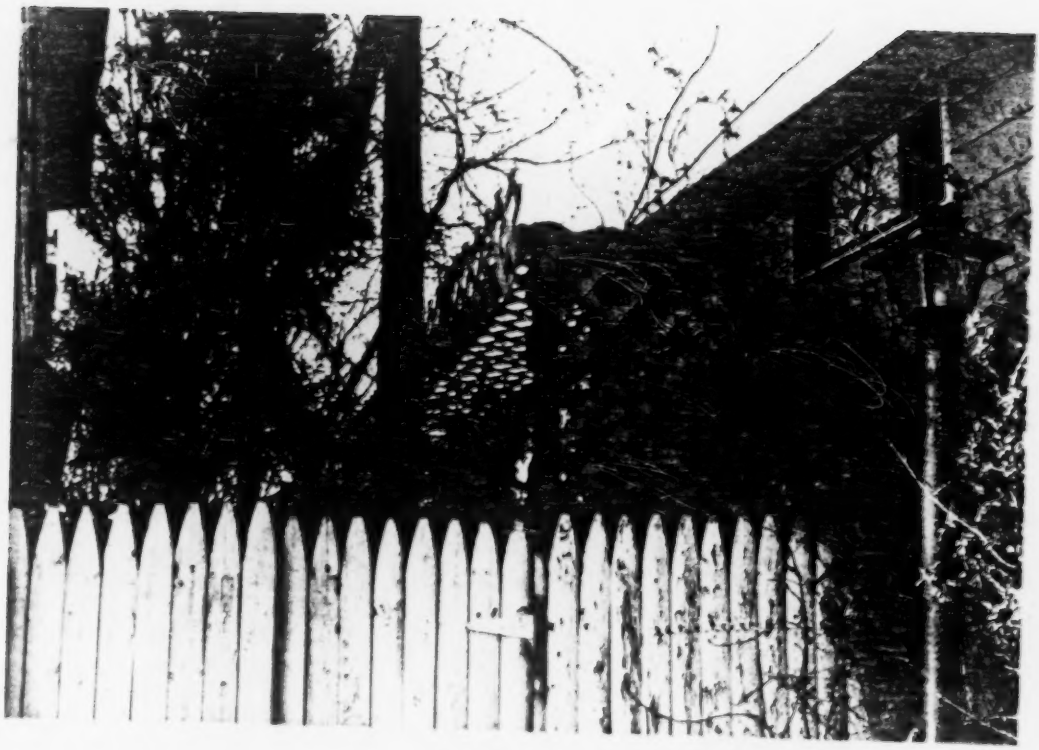
Mr. Cafaro: "It's separate and distinct trellises, your Honor, and there are no ordinances."

TRIAL TRANSCRIPT - Page 67,lines 1-7.
SENTENCING HEARING

The Court: "These were pieces of trellis work which were attached to and adhered to the fence which was surrounding your property, and that's what was found by the Court. We're not going to argue about that now. We're here for sentencing."

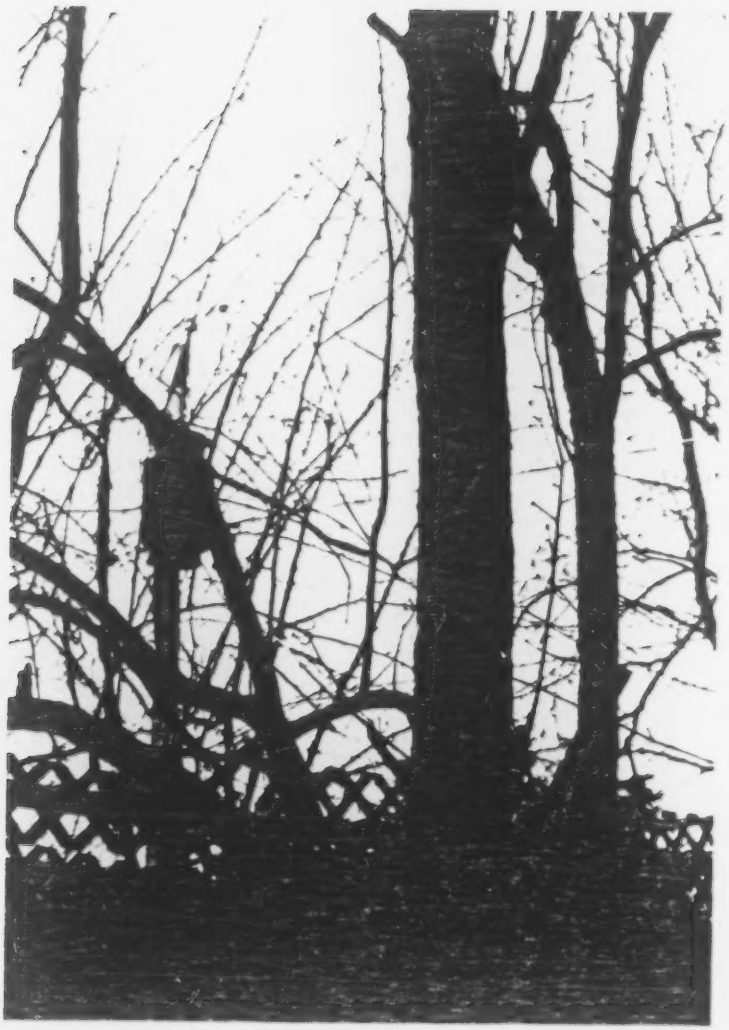
The purpose and function of this Appellant's trellis arbors is to support vines, and this is self-evident.

APPENDIX K(10)

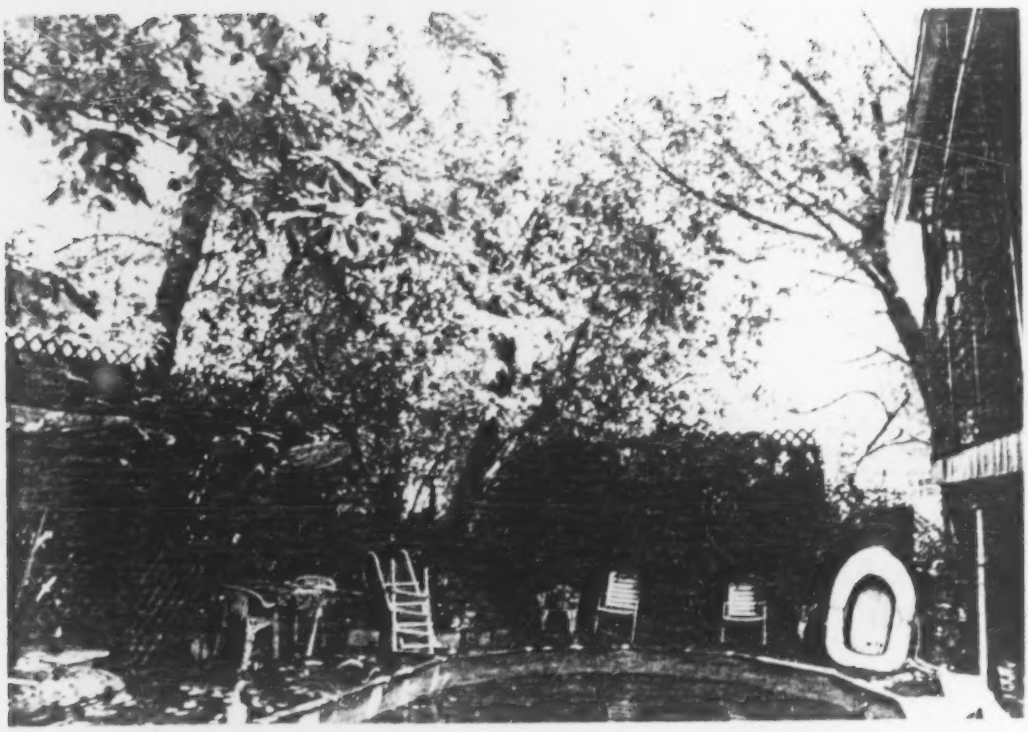


Appellant's trellis-arbors are behind my six-foot stockade fence, and both self-evidently have different functions and purposes (if the stockade fence is removed the trellis-arbors do not shut in the land).

APPENDIX K(11)



Power lines, self-evidently, are never placed so close to the ground that they may touch this Appellant's trellis arbors that are 8 to 10 feet tall.



The trellis-arbor, between our apple tree and cherry tree (near the raft), is not connected to the trellis-arbor on the northern side of our property (near the patio umbrellas), self-evidently discontinuous trellis-arbors, with many feet of open space between them, do not shut in the land.

RELEVANT ARTICLES FROM THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

(Adopted by the United Nations General Assembly at its 183rd meeting, held in Paris on 10 December 1948.)

Article 1. All humam beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political **or other opinion**, national or social origin, property, birth or other status.
Futhermore, **no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs**, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has **the right to life, liberty and security** of person.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17.(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to

change his religion or belief, and freedom, either **alone** or in community with others and in public **or private**, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. **Everyone has the right to freedom of opinion and expression**; this right includes freedom to hold opinions without interference and to seek, receive **and impart information and ideas through any media** and regardless of frontiers.

Article 20.(2) **No one may be compelled to belong** to an association.

Article 27.(2) **Everyone has the right to the protection of the moral and material interests** resulting from any scientific, literary or artistic production **of which he is the author**.

Article 28. **Everyone is entitled** to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.(3) The **rights and freedoms may in no case be exercised contrary** to the purposes and principles of the United Nations.

APPENDIX L(3)

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.